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Before the Federal Communications Commission

Washington, D.C. 20554

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In the matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	NO. 95-185 Written Comments Date: March 1, 1996

BACKGROUND OF THE PROCEEDING

The Connecticut Department of Public Utility Control, (Department), submits the following Written Comments regarding the Commission's Notice of Proposed Rulemaking, (NPRM) in the above cited proceeding. In accordance with the NPRM's preferred outline for comments, the Department's submission principally relating to jurisdictional issues falls under the area of II(B)(2) of the outline, "Jurisdictional Issues."

In its Notice of Proposed Rulemaking, the Federal Communications Commission (Commission) tentatively concludes at ¶111 that the Commission has sufficient authority to implement one of several proposed approaches to Commercial Mobile Radio Service

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(CMRS) mutual compensation.[1] The Commission's tentative conclusion is principally based upon its interpretation of the Omnibus Budget Reconciliation Act of 1993's (OBRA), amendments to §332 of the Communications Act, and its determination that state and federal regulation of mutual compensation is inseverable, thereby justifying preemption under *Louisiana PSC v. FCC* (*Louisiana PSC*).[2] The Department respectfully disagrees with the Commission's conclusions, and submits that the Commission's previous interpretations of OBRA strike the appropriate balance between state and federal regulatory authority under both the Communications Act and the Telecommunications Act of 1996, and that federal preemption under the *Louisiana PSC* holding is unwarranted. Finally, the Department submits that there are policy considerations that justify different treatment of CMRS providers with regard to mutual compensation.

A. THE COMMISSION'S INTERPRETATION OBRA IS TOO EXPANSIVE AND CONFLICTS WITH ITS PREVIOUS INTERPRETATIONS

By its terms, OBRA only preempts CMRS[3] entry regulation and rate regulation. In order to preempt state regulation, a federal agency must act within the scope of its congressionally delegated authority.[4] Because OBRA's preemption of state regulation of CMRS only extends to entry and rate regulation, Congress has not delegated the Commission the authority to preempt state regulation of intrastate financial arrangements such as mutual compensation. The Commission has previously correctly considered intrastate mutual compensation as a solely intrastate matter.

1. OBRA'S PREEMPTION IS LIMITED BY ITS OWN TERMS TO ENTRY REGULATION AND RATE REGULATION

By its terms, OBRA merely exempts states from the specifically enumerated actions of CMRS entry regulation and CMRS rate regulation. Because OBRA's preemption only

[1] Mutual compensation is based on the concept that calls originating on one network may be terminated on another network. Because costs of termination are typically not recovered through the called party, mutual compensation attempts to recover those costs through charging the calling party.
[2] *Louisiana PSC v. FCC*, 476 U.S. 355 (1986).
[3] Commercial Mobile Radio Services
[4] *Louisiana PSC* at 374.

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extends to entry regulation and rate regulation, that Act cannot be used to preempt state regulation of intrastate mutual compensation.

As the NPRM correctly states, §152 of the Communications Act of 1934 established the dual state and federal system of telephone service regulation. Section 152(a) of the Communications Act currently grants the Commission jurisdiction over all interstate communication by wire and radio, while §152(b) reserves to the states jurisdiction over all intrastate communication by wire or radio of any carrier. State regulation of intrastate communication under the Communications Act is not plenary, however, and statutory exceptions do exist. Section 332(c)(3), as modified by OBRA, is one such limitation. OBRA's modifications, which are essentially the genesis of this proceeding, specifically preempted states from entry regulation and rate regulation of CMRS services, and provided a process by which states could petition the Commission to reestablish oversight of CMRS rate regulation upon demonstrating certain market conditions. OBRA's language specifically provided, in relevant part, that:

> Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . . except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. . . . Notwithstanding the first sentence of this paragraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service . . . . If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary . . .

After establishing the preemption and the petitioning structure in §332(c)(3)(A), OBRA establishes in §332(c)(3)(B) the procedure by which a state could petition to retain CMRS rate regulation in existence on June 1, 1993, and specifies that the state would retain authority over such rates until the Commission completes its consideration of the petition. That section further clarifies that a state's continued rate regulation, if granted, would extend only for such time period as the Commission deems necessary to ensure that CMRS rates are just and reasonable and not unjustly or unreasonably discriminatory. Clearly, the terms of and the structure established by OBRA predominantly relate to rate regulation of CMRS by states. A state's rate regulation of intrastate mutual compensation charged by landline telephone companies, as the Commission has previously noted, is rate regulation only of those landline companies, not of CMRS providers.[5] Therefore, authority for preemption of mutual compensation does not exist under OBRA's language preempting state CMRS rate regulation.

Nor does §332's preemption with regard to entry regulation provide the Commission with the authority it seeks to wield. The NPRM's tentative conclusion that state interconnection policies could effectively prevent CMRS entry, and, therefore, are preempted by §332 stretches the plain meaning of the statute. Section 332's preemption of state CMRS entry regulation clearly refers to state regulation over the entry of providers to the CMRS market (and its equally, if not more important corollary, exit from the CMRS market).

Historically, states regulate intrastate wireline and radio telecommunications. If a transmission meets the criteria established for telecommunications, states typically require the company providing that transmission to prove its technical, managerial and financial abilities to provide that service through a certification proceeding. It is generally through these certificates that states are empowered to place sanctions on providers, including the ultimate sanction, revocation of a certificate. Therefore, the states' powers to grant and revoke certification generally control the entry and exit of firms in the intrastate telecommunications market. By preempting state regulation of the entry of CMRS firms, OBRA clearly intended to exempt CMRS firms from state certification and revocation powers. To construe OBRA as granting to the commission the authority for preemption of mutual compensation requires a lead of that logic does not exist under OBRA's language preempting state CMRS entry regulation.[6]

OBRA's language also indicates the limits of its preemption in the very sentence that creates the preemption. After preempting rate and entry regulation, OBRA limits its

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[5] Docket No. 94-107, *Petition on Behalf of the Louisiana Public Service Commission for Authority To Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana,* 10 FCC Rcd 7898, 7908 (1995).

6 See *Louisiana PSC v. FCC*, 476 U.S. 355 (1986), at 377 ("we do not find the meaning of [§202] so unambiguous or straightforward to override the command of §152(b) that 'nothing in this chapter shall be construed to apply or to give the Commission jurisdiction' over intrastate service."

preemption by stating that "this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." §332(c)(3)(A). Therefore, after defining certain specific limits of a state's authority, OBRA qualifies and places limits on the breadth of federal preemption, and allows states to use their authority to achieve other intrastate communications-related objectives beyond entry and exit regulation. OBRA allows states to retain regulatory authority over the terms and conditions of CMRS because terms and conditions of intrastate services are solely matters of state concern. The right of a state to regulate matters of intrastate concern is a right that the Commission and the appelate courts have long recognized.

2. THE COMMISSION'S PREVIOUS INTERPRETATIONS OF OBRA STRIKE THE APPROPRIATE REGULATORY BALANCE

Both before and after the passage of OBRA, the Commission has recognized the intrastate nature of financial arrangements related to intrastate mutual compensation. This recognition is the appropriate regulatory balance under the dual federal-state system of regulation.

a. The Commission Has Previously Recognized that OBRA's Statutory Prohibition on Rate Regulation Did Not Include Mutual Compensation

The Commission has recently recognized that OBRA itself does not circumscribe a state's traditional authority to monitor commercial activities within its borders. While the Commission's brief discussion in Docket No. 94-107, *Petition on Behalf of the Louisiana Public Service Commission for Authority To Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana* was not intended to be more than a preliminary analysis, the limits on federal authority it recognizes are correct and unchanged. After initially noting that OBRA's legislative history strongly indicated that its prohibitions left many aspects of a state's existing regulatory system outside the statutory prohibition on rate regulation, the decision opines that interconnection rates charged by landline telephone companies to CMRS providers appeared to be rate regulation of only the landline companies, not the CMRS providers, and were therefore not preempted.

While this conclusion was a preliminary one, it clearly embodies the Commission's rationale that it had consistently applied in previous decisions and orders.

b. The Commission Has Consistently Recognized That Financial Arrangements Between Local Exchange Companies and CMRS Providers are Matters of State Concern

Beginning with its *Indianapolis*[7] decision, the Commission has correctly recognized that intrastate mutual compensation is an issue of local concern. In *Indianapolis*, the Commission adjudicated a complaint from Indianapolis Telephone, a CMRS provider, that Indianapolis Bell refused to provide "reasonable interconnection" in violation of both §§201(a) and 202[8] of the Communications Act, and of the Commission's own previous *Cellular Decisions*.[9] The Commission correctly concluded in Indianapolis that it "d[id] not have any jurisdiction over particular aspects of carrier-to-carrier financial arrangements . . . where these arrangements solely relate to intrastate communications," and that "compensation arrangements for cellular interconnection were properly left to negotiations between the carriers involved or, in the end, subject to state regulatory jurisdiction."[10]

The Commission deferred intrastate mutual compensation arrangements to state jurisdiction once again in its *Interconnection Order*.[11] In that rulemaking, CMRS providers argued in favor of mutual compensation for switching charges in the interstate context. Local exchange carriers attempted to negate those requests by citing *Indianapolis*. In ordering interstate mutual compensation, the Commission stated that the local exchange companies' reliance on *Indianapolis* was misplaced and instead cited *Indianapolis* as "appl[ying] to financial arrangements relating 'solely to intrastate communications.'"[12]

The principles enunciated by the Commission regarding the intrastate nature of intrastate mutual compensation arrangements are extended through to its *CMRS Second*

[7] *Indianapolis Telephone Company v. Indiana Bell Telephone*, 1 FCC Rcd 228 (1986).
[8] These sections require "reasonable interconnection" by all common carriers.
[9] *Cellular Communications Systems*, 86 FCC 2d 469 (1981) ("Order"), *recon.*, 89 FCC 2d 58 (1982) ("Reconsideration Order"), *further recon.*, 90 FCC 2d 571 (1982) ("Further Reconsideration Order").
[10] *Indianapolis*, 1 FCC Rcd at 229, 230 ¶10.
[11] *Interconnection Order*, 2 FCC Rcd 2910 (1987).
[12] *Id.* at 2915, ¶44.

Report and Order.[13] The *Second Report and Order*, issued subsequent to the passage of OBRA, explicitly states at ¶232 that its limited principle of interstate mutual compensation is in keeping with its previous decision, and, further, specifically references its earlier *Interconnection Order* in a footnote. The *Interconnection Order* in turn cites *Indianapolis* as the basis for its conclusions. Thus, the Commission has historically recognized the intrastate nature of financial arrangements relating solely to intrastate communications both before and after the passage of OBRA, and this distinction has reflected more broadly a proper and consistent recognition of the dual federal-state system of regulation.

B. PREEMPTION OF STATE REGULATION OF INTERCONNECTION RATES IS NOT JUSTIFIED ON THE BASIS OF INSEVERABILITY

As discussed above, the terms of OBRA do not provide the Commission with the ability to preempt state regulation of intrastate interconnection. The Commission, however, also reaches the determination that, contrary to its conclusion in previous orders, the strong federal policy underlying §332 favoring a nationwide wireless network warrants preemption of state regulation under *Louisiana PSC*. The Department strongly disagrees with this conclusion.

a. State Regulation of Intrastate Interconnection Is a Lawful Exercise of Its Own Authority Over Intrastate Service, and Can Coexist With the Exercise by the FCC of Its Own Lawful Authority

Louisiana PSC[14] and its progeny stand for the proposition that the only limit on a state's authority over intrastate telephone service occurs when the state's exercise of its authority negates the Commission's exercise of its own lawful authority over interstate communication.[15] Consequently, the Commission may preempt only after bearing the burden of justifying its entire preemption order by demonstrating that the order is narrowly tailored to preempt only such state regulations as would negate valid Commission regulatory goals - it is not sufficient if the commission merely shows that some of the preempted state

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[13] *Implementations of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (*Second Report and Order*).

[14] *Louisiana PSC v. FCC*, 476 U.S. 355 (1986).

[15] *NARUC v. FCC*, 880 F.2d 422 (1989) (NARUC III).

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regulation would frustrate those goals.[16] A necessary corrollary to this latter "variety" of preemption, is that "a federal agency may preempt state law only when and if it is acting within the scope of its congressionally delegated authority."[17] The Department submits that intrastate mutual compensation represents a clear instance where state and federal authority can coexist, and where the exercise of authority reserved to the states under the Communications Act, OBRA, and the 96 Act will not frustrate the commission's goals.

a. State Regulation of Intrastate Mutual Compensation Is Lawful Regulation of Local Exchange Carriers

As noted *supra*, the Communications Act grants regulatory authority over intrastate communications service to the states. Regulation of intrastate mutual compensation does not fall under the category of prohibited rate regulation of CMRS providers, but rather under permissible rate regulation of intrastate communications services.[18]

b. State Regulation of Intrastate Mutual Compensation Would Not Impose An Obstacle to the Commission's Objectives by Requiring Duplicate Facilities

In contrast to previous situations where the Commission's preemption has been allowed, however, state regulation in this area would not effectively make impossible the Commission's regulation. The recurring theme in past decisions is that where state regulation differs from Commission regulation to the extent that it would cause duplication in facilities, preemption is allowed.

The *NCUC* cases, litigated prior to *Louisiana PSC*, were cited by the Supreme Court in *Louisiana PSC* as an instance where state authority was required to yield to national imperatives because it was not economically or operationally feasible for local exchange companies to comply with both. In keeping with its policy of detariffing the consumer premises equipment (CPE) market, the Commission preempted state regulations of CPE,

[16] *People of the State of California v. FCC*, 905 F.2d 1217, 1243 (1990)("California I").
[17] Louisiana PSC at 375.
[18] *See Petition on Behalf of the Louisiana PSC for Authority To Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana*, 10 FCC Rcd 7898, 7908.

which had required that non-carrier provided CPE be utilized only for interstate service. The Fourth Circuit Court of Appeals upheld the Commission's preemption because the practical and economic impossibility of requiring separate facilities for interstate and intrastate communications rendered the Commission's objective of achieving a competitive CPE market nugatory.

Similarly, in *People of the State of California v. FCC*, (*California III*), the Ninth Circuit recognized the Commission's narrowly tailored preemption of state requirements because state regulation would essentially negate the Commission's goal of allowing integrated provision of enhanced and basic services. In order to protect ratepayers against cross-subsidization of enhanced services, many states required the provision of enhanced services on a structurally separated basis. Because it believed that accounting safeguards were adequate to protect ratepayers and that structural separation discouraged innovation and efficiency in the delivery of enhanced services and caused duplication of organizations and facilities, the Commission preempted state structural separation requirements. Because the court agreed with the Commission's conclusion that economic reasons would require local exchange companies to choose to comply with state requirements for structural separation for jurisdictionally mixed services as well as purely intrastate services, the court upheld the Commission's narrowly tailored preemption of state structural separation requirements for jurisdictionally mixed facilities. The Commission's goals of offering enhanced services on an integrated basis and the states' goals of protecting ratepayers against cross-subsidization of the facilities used to offer those enhanced services could not coexist.

In contrast with the situations referred to in the *NCUC* cases and *California III*, state regulation of intrastate mutual compensation would not require a CMRS provider or a local exchange company to deploy any additional facilities. CMRS providers were protected against the need for duplicate facilities by the Commission's preemption of state regulation over the kind of interconnection made available to CMRS providers.[19] Nothing in this scheme of regulation could require duplication of facilities, and the Department is skeptic that this has ever occurred. Nor would state regualtion interfere with the federal policy of promoting the right of a CMRS provider to interconnect, as discussed below.

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[19] *Second Report and Order* at ¶230.

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c. State Regulation of CMRS Interconnection and Intrastate Mutual Compensation Could Not Negate Federal Goals Contained In the Right to Interconnection

The Department believes that the Commission's existing requirements in the *Cellular Decisions* fully protect and promote federal goals and that the concerns raised by the Commission's NPRM that the federal policy favoring a nationwide wireless network would be frustrated by state regulation over interconnection are unfounded and specious. The Commission's conclusion is based on the notion that interconnection that is priced too high can be the marketplace equivalent of no interconnection.[20] The Commission's existing requirements in the *Cellular Decisions* is that telephone companies are expected to furnish appropriate interconnection to non-wireline cellular carriers upon terms no less favorable than those offered to the cellular systems of affiliated entities.[21] Under these circumstances it is inconceivable that a telephone company would ever tariff interconnection at a rate so high as to preclude CMRS interconnection, since interconnection would effectively be denied to its own cellular affiliate, given the duopolistic structure of cellular CMRS. In addition to the practical impossibility of interconnection being priced so high as to preclude market entry, the Department further expects that the same rules regarding interconnection to be extended to PCS providers, and it is unlikely that local exchange companies could effectively preclude interconnection to PCS providers in the future. Lastly, the Department is of the opinion that competition will reduce the ability of any local exchange company to use its market power to preclude interconnection. Connecticut, for example, has certificated five facilities-based local exchange competitors, and is currently considering applications by three others. Just as consumers will have a choice of local exchange providers with which to place calls, CMRS providers will have a choice of local exchange providers with which to terminate calls.[22] Because the Federal Telecommunications Act of 1996 (96 Act) has also removed barriers to local exchange competition in states other than Connecticut, the Department is of the opinion that many of the Commission's concerns with regard to precluding CMRS interconnection have been effectively mooted.

[20] NPRM at ¶10, 111.

[21] *Cellular Communications Systems*, 86 FCC 2d 469, 496 (1981).

[22] Similarly, many local exchange companies have sought to reform their access tariffs in order to keep their networks an attractive and viable option for call termination. The same concerns that have been expressed regarding access losses will likely drive CMRS interconnection pricing decisions.

d. Federal and State Regulation Over Intrastate and Interstate Mutual Compensation Can Coexist Because the Facilities Are Severable

The jurisdictional separations process was established to deal with the jurisdictional tensions arising from the use of a single system to provide both interstate and intrastate service.[23] The mere fact of joint usage of facilities for interstate and intrastate services does not provide the Commission with the authority to preempt regulation over those facilities, especially when the jurisdictional separations process can accommodate both forms of regulation.[24] The Department submits that because the traffic and the costs of interconnection and intrastate mutual compensation are allocable, preemption is unnecessary, and regulatory authority can therefore coexist.

Intrastate and interstate traffic can be readily identified through the use of percent interstate use (PIU) and percent local use (PLU) indicators. Therefore, PIU and PLU indicators can and have been used traditionally for CMRS traffic and access traffic, and have served as an allocation mechanism between the two types of traffic. Indeed, the Commission's *Second Report and Order* reached the conclusion that local exchange companies' costs with respect to the provision of interconnection are segregable.[25]

As the states progress into local competition, local exchange companies and competitive local exchange companies alike will use this same methodology to identify traffic terminated on their networks. Therefore, any pronouncement by the Commission that the use of PIU and PLU indicators cannot effectively allocate between interstate and intrastate jurisdictions will have ramifications that go far beyond this proceeding. Unnecessary preemption solely based on the mere existence of jurisdictionally mixed traffic will affect the regulation of the entire local loop, including unbundled loops. As the country moves toward local exchange competition, the Commission can and should rely on the mechanisms currently in place that are fully capable of allocating responsibility between the jurisdictions, unless there is a valid federal reason that makes it necessary to preempt. As was discussed hereinabove, such preemption is not necessary.

[23] *Louisiana PSC* at 369.
[24] *NARUC III* at 428.
[25] *Second Report and Order* at ¶231.

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E. POLICY REASONS REQUIRE THAT INTERCONNECTION JURISDICTION REMAIN WITH THE STATES

The Commission's NPRM indicates the Commission's preference is towards equivalent network interconnection charges for equivalent classes of customers unless there are cost differences or policy considerations that justify different rates.[26] Additionally, the Commission cites state policies such as Connecticut's a reason for the creation of a uniform national framework surrounding CMRS mutual compensation.[27] The Department respectfully submits that valid policy reasons exist for its specific treatment of CMRS mutual compensation.

First, with regard to paging providers, the Department denied those providers mutual compensation because evidence introduced at its adjudicatory hearing indicated that as between local exchange companies and pagers, the exchange of traffic was not mutual at all. Rather, the exchange of traffic between those two entities was entirely one-way, as paging customers never called local exchange customers through the use of the paging system. Calls returned by paging customers were necessarily returned on local exchange company facilities. Given the nonreciprocal nature of that traffic, the Department therefore found valid policy reasons based on facts adduced at hearings for preventing the subsidization or outflow of ratepayer funds from the local loop to paging networks.[28]

Similarly, with regard to CMRS providers, the Department denied mutual compensation based on the obligations and responsibilities it saw necessary to implement a competitive local exchange market under its local competition mandate, Connecticut Public Act 94-83. Among the obligations and responsibilities the Department deemed necessary were nondiscriminatory network connection, operational and technical requirements, universal service requirements and Lifeline contribution. Because the Department lacks the jurisdiction to impose most of those requirements on CMRS providers,[29]the Department

[26] NPRM at ¶4.

[27] Docket No. 95-04-04, *DPUC Investigation Into Wireless Mutual Compensation Plans* (1995).

[28] *Id.* at 6.

[29] Pursuant to the power granted to it in Public Act 94-83 and its abilities to establish terms and conditions of CMRS service under OBRA, the Department placed Lifeline responsibilities on CMRS providers as part of their obligation towards affordable service in a multi-provider market. That effort was appealed by Bell Atlantic Nynex Mobile.

limited those providers to the mutual compensation provided for by federal law for interstate traffic. Assumption by the CMRS providers of the aforementioned obligations was established as a precondition for eligibility for intrastate mutual compensation.[30]

The Department submits that in these early stages of implementing local competition and encouraging a multi-provider market within their borders, the states should be allowed to ensure that certain valid policy goals are achieved. The Department asserts that the policy goals underlying its decisions in the intrastate wireless mutual compensation arena are valid goals, and justify differing treatment of CMRS providers.

D. THE TELECOMMUNICATIONS ACT OF 1996

At the outset, the Department notes that in regard to the above analysis of the statutory scheme of CMRS regulation, the 96 Act in §253(e) explicitly states that §332(c)(3) is unchanged and remains in force. This congressional reaffimation further weakens the commission's reasoning that OBRA permits it to preemit the states' prerogatives to regulate intrastate financial arrangements. Congress could have acted in the 96 Act to explicitly enlarge the scope of federal preemption, but it did not.

With regard to interconnection, the 96 Act establishes in §251(b)(5) the duty of each local exchange carrier to establish reciprocal arrangements for the transport and termination of telecommunications. The 96 Act also establishes local exchange carrier responsibilities regarding interconnection, (among other areas), specifically requiring nondiscriminatory connection. However, because the 96 Act specifically exempts CMRS providers from the definition of local exchange carriers (§153(44)), it is clear that many of the responsibilities that accrue to local exchange carriers will not accrue to CMRS providers without further action by the Commission.

Section 252(e)(3) of the 96 Act explicitly reserves a state commission's authority, in its role reviewing interconnection agreements, to require compliance with intrastate telecommunications service quality service standards or requirements. The Department asserts that because its authority over a CMRS provider's quality of service may not exist

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[30] *Id.* at 15.

under §332's allowable state regulation of the terms and conditions of intrastate CMRS service, states should retain regulatory authority over intrastate mutual compensation as one method of placing responsibilities on providers, including nondiscriminatory interconnection responsibilities.

F. SPECIFIC COMMENTS ON PROPOSED ALTERNATIVES

The 96 Act favors interconnection arrangements based on negotiations between carriers. Prior to its enactment, on September 22, 1995, the Department issued its own unbundling and interconnection decision which encouraged negotiations, and supplied guidelines for negotiated agreements to follow.[31] Additionally, that decision established a working group of local exchange providers and competitive local exchange providers for the resolution of technical interconnection issues outside the Department's expertise.

While the Department disagrees with the Commission's ability to implement interconnection policies that affect purely intrastate concerns such as mutual compensation, of the three proposed alternatives, the Department views the first alternative, contained in ¶108, as the alternative closest to the system of regulation it has already established, in that it issues guidelines to follow for interconnection agreements and would rely on an industry group to develop specific standards regarding interconnection arrangements.

However, the Department disagrees with that proposal to the extent that it would place responsibility in the industry group for the establishment of terms and conditions for interconnection arrangements. Consistent with the language of §332(c)(3), responsibility for terms and conditions should remain under the jurisdiction of state commissions, with technical connection responsibilities to be resolved through an industry group. Disagreements arising out of those negotiations should be resolved with a state commission's help.

[31] Docket No. 94-10-02, *DPUC Investigation Into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network* (September 22, 1995).

CONCLUSION

For all of the above-stated reasons, it is respectfully submitted that the Commission's ability to preempt state jurisdiction over intrastate interconnection and mutual compensation does not exist in OBRA's modifications to the statutory language of §332(c)(3). Additionally, the Department submits that the conditions necessary for preemption under *Louisiana PSC* are not present. Finally, the Department submits that while the jurisdiction to impose one of the three alternative proposals regarding regulation of mutual compensation does not exist, the first of the three (¶108) is most favorable, with modifications.

Date: March 1, 1996.

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